



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Diversified Technologies

File: B-258305

Date: January 6, 1995

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for the agency.
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of the decision.

DIGEST

The refusal of a Department of Energy management and operating contractor to extend a proposal due date on a request for proposals, whereunder three proposals were received, to accommodate the request by a prospective offeror shortly before the closing date for receipt of proposals does not violate the Federal norm as embodied in applicable Department of Energy regulations.

DECISION

Diversified Technologies protests the refusal of Westinghouse Savannah River Company, a Department of Energy (DOE) management and operating (M&O) contractor, to extend the deadline for the submission of proposals under request for proposals (RFP) No. D92698-PB, for the deionization of reactor area disassembly basins.

We deny the protest.

Westinghouse issued the RFP on July 14, 1994, and sent copies to 16 prospective offerors, with a proposal due date of August 19. The list of prospective offerors did not include Diversified. An August 18 amendment to the RFP extended the proposal due date to 2 p.m., August 26. After learning of the existence of the RFP from a third party, Diversified telephoned Westinghouse on August 25 to request that it be sent a copy of the RFP via facsimile transmission. This request was denied by the Westinghouse contracting officer. On the morning of August 26, the day proposals were due, Diversified asked Westinghouse to extend the due date to August 30, so that Diversified could submit a proposal. Westinghouse refused to grant Diversified an

extension and Diversified then filed a timely protest with our Office. The protester essentially contends that by denying Diversified the opportunity to submit a proposal, Westinghouse is improperly restricting competition. Proposals received by Westinghouse by the due date are being held unopened pending resolution of this protest.

We review this protest under 4 C.F.R. § 21.3(m)(10) (1994), which provides for our review of awards of subcontracts by government prime contractors where the awards are made "by or for the government." See Elma Eng'g, 70 Comp. Gen. 81 (1990), 90-2 CPD ¶ 390. Since federal procurement statutes and regulations do not apply per se to a managing contractor such as Westinghouse, such a prime contractor must conduct procurements according to the terms of its contract with the agency and its own agency-approved procedures. Merrick Eng'g, Inc., B-238706.3, Aug. 15, 1990, 90-2 CPD ¶ 130. Our review is limited to determining whether the procurement conforms to the "federal norm," i.e., the policy objectives in the federal statutes and regulations that should be reflected in contractor purchases. Id.

DOE has identified specific tenets of federal procurement policy in its acquisition regulations that must be addressed in an M&O contractor's purchasing system. 48 C.F.R. § 970.7103(c) (1993). The regulations establish the policy that a contractor's purchasing system provide "fair and effective competition" through specified methods calculated to treat all competitors "fairly and equitably." 48 C.F.R. § 970.7103(c)(2) and (3). Among the specified methods that a contractor must employ in its purchasing system and methods to ensure fair and equitable treatment are:

"(v) Publicizing the solicitation by
(A) distribution to a reasonable number of prospective offerors and (B) use, as appropriate, of such means as plan rooms, journals, expressions of interest or other public notices, or the Commerce Business Daily particularly where there are not adequate numbers of qualified sources in the local area;

"(vi) Providing equal access to solicitation data and information;

"(vii) Offering sufficient numbers of qualified entities the opportunity to propose, and tailoring the method of carrying out the competition such that there is every expectation that proposals will be received in numbers that will substantiate that the cost or price is in the Government's best interest;

"(viii) Allowing sufficient time for preparation and submission of proposals;

"(ix) Providing for a uniform time for submission."

48 C.F.R. § 970.7103(c) (3) (v)-(ix).

Westinghouse distributed the solicitation to 16 prospective offerors which it deemed qualified to compete for this project. Given the specialized nature of this project, we regard this as a reasonable number for purposes of publicizing the solicitation as required by 48 C.F.R. § 970.7103(c) (3) (v) (A). Westinghouse received three proposals by the due date, which we have held in the context of direct purchasing by the government to be generally sufficient. See Rut's Moving & Delivery Serv., Inc., 67 Comp. Gen. 240 (1988), 88-1 CPD ¶ 139.

Diversified questions why it was not placed on the bidders' list, when it claims to have participated in all relevant procurement development programs and to have responded to supplier questionnaires issued by Westinghouse. Diversified was in fact previously entered into Westinghouse's Procurement Cycle System¹ as a potential vendor. However, Westinghouse did not actually search the list of vendors in the data base for this procurement because its contracting personnel were otherwise aware of what they considered to be a sufficient number of vendors to ensure adequate competition. Even had Westinghouse consulted its data base, it is unclear whether the vendor categories under which Diversified was listed would have correlated to the subject matter of the procurement at issue here.

Furthermore, we are aware of no requirement that Westinghouse specifically search its computer data base or consult any specified trade journal, such as the Nuclear News Buyers Guide named by the protester, in performing market research. The applicable DOE regulation encourages the "use, as appropriate, of such means" as journals or expressions of interest, but does not require that such sources be consulted. 48 C.F.R. § 970.7103(c) (3) (v) (B). Because Westinghouse was aware of a sufficient number of

¹A computer data base which Westinghouse uses to track subcontracts and which lists vendors by commodity code.

prospective offerors it neither needed to use such sources nor to synopsise the RFP in the Commerce Business Daily.²

With regard to equal access by prospective offerors to the RFP, as required under 48 C.F.R. § 970.7103(c)(3)(vi), the agency states that the RFP was available upon request and had Westinghouse become aware earlier that Diversified was a prospective offeror, Westinghouse would have placed Diversified on the offerors' list and sent it a copy of the RFP. The fact that Westinghouse refused to send Diversified a copy of the RFP via facsimile transmission the day before proposals were due as requested by Diversified does not mean that this regulation was violated. The other prospective offerors were apparently mailed copies of the RFP soon after it was issued; we think the contracting officer had the discretion to refuse Diversified's extraordinary last-minute request to send a copy of the lengthy RFP via facsimile transmission and to refuse to extend the due date. Although it is not clear precisely why Westinghouse would not extend the closing date,³ we find no evidence that Westinghouse was motivated by an intent to prevent Diversified from competing or to improperly restrict competition. Given that three proposals were received, we do not object to Westinghouse's refusal to extend the proposal due date to accommodate Diversified. See Gamma Microwave, Inc., B-236598, Dec. 18, 1989, 89-2 CPD ¶ 562.

Diversified complains that it had previously communicated with Westinghouse engineers regarding the project and was assured it would be placed on the bidders' list and receive a copy of the solicitation. However, the agency states that the buyer of the services was not aware that Diversified was an interested offeror until Diversified contacted Westinghouse the day before proposals were due.


²Prime contractors, such as Westinghouse, are permitted, but not required, to publicize subcontracting opportunities in the Commerce Business Daily. Federal Acquisition Regulation (FAR) § 5.206.

³Westinghouse denied Diversified's request to extend the proposal due date on the basis that delaying the project further would not be in the best interests of the government as deionization of the disassembly basins is an essential part of the site's environmental cleanup program. While Diversified disputes the urgency cited by Westinghouse, and this asserted urgency seems inconsistent with Westinghouse's decision not to open proposals during pendency of this protest, the decision not to extend the date for receipt of proposals was apparently "consistent with the contractor's efficient performance of the contractual mission." 48 C.F.R. § 970.7102(c)(2).

Nonetheless, the individuals who had communicated with Diversified were not designated contacts in the procurement office responsible for the dissemination of the RFP. The responsible individual was the contracting officer identified in the solicitation and Diversified did not timely contact this person. Assurances received from other Westinghouse employees do not require that the competition be reopened to accommodate Diversified. See Energy Management Sys., B-258391, Nov. 23, 1994, 94-2 CPD ¶ 208.

Diversified also alleges that Westinghouse may have a reason to restrict competition because a subsidiary of Westinghouse might be competing for this project. We note that 48 C.F.R. § 970.7105 does permit purchasing from contractor-affiliated sources, but find Diversified's allegation that Westinghouse is restricting competition to benefit its subsidiary unsupported by the record. Westinghouse's responses to the vendor questions in the August 18 RFP amendment reveal that Vectra Technologies, Inc., which the protester describes as one of the few "viable, credible service companies" in this field, attended a "pre-bid walk through" of the site conducted by Westinghouse, as did two other companies (the alleged Westinghouse subsidiary, Scientific Ecology Group, was not listed as having attended). The fact that these other firms participated in the walk through evidences that Westinghouse was not limiting competition to benefit its subsidiary.

The protest is denied.


Sr Robert P. Murphy
General Counsel